

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

SEP 30 2010

JENNIFER BUTLER,

Plaintiff,

v.

GILLIS HAMMETT, in his individual and
official capacities, et al.

Defendants.

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DAVID J. MALAND, CLERK
BY
DEPUTY _____

4:09cv402

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On August 30, 2010, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant Denton County MHMR Center's Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim for Which Relief Can be Granted (Dkt. 38) should be GRANTED, that Defendant Hammett's Motion for Judgment on the Pleadings Pursuant to Fed. R. Civ. P. 12(c) (Dkt. 40) should be GRANTED, that Defendant Tammy Weppelman's Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim for Which Relief Can Be Granted (Dkt. 37) should be GRANTED in part and DENIED in part, that all claims against Defendant Hammett (in both his individual and official capacity) should be dismissed, that the official capacity claims and state law claims of conspiracy and intentional infliction of emotional distress against Weppelman should be dismissed, and that the claims against Defendant Weppelman in her individual capacity

under 42 U.S.C. § 1983 should remain pending at this time.

The court, having made a *de novo* review of the objections raised by Plaintiff as well as Defendants' responses, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of Plaintiff are without merit. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Defendant Denton County MHMR Center's Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim for Which Relief Can be Granted (Dkt. 38) is GRANTED, Defendant Hammett's Motion for Judgment on the Pleadings Pursuant to Fed. R. Civ. P. 12(c) (Dkt. 40) is GRANTED, Defendant Tammy Weppelman's Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim for Which Relief Can Be Granted (Dkt. 37) is GRANTED in part and DENIED in part, all claims against Defendant Hammett (in both his individual and official capacity) are dismissed, and the official capacity claims and state law claims of conspiracy and intentional infliction of emotional distress against Weppelman are dismissed. The claims against Defendant Weppelman in her individual capacity under 42 U.S.C. § 1983 remain pending at this time.

IT IS SO ORDERED.

SIGNED this 29th day of Sept., 2010.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE